




FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF GENERAL COUNSEL

memorandum

TO: Director, Reference Information Center
Chief, Wireless Telecommunications Bureau

FROM:  Daniel M. Armstrong
Associate General Counsel

SUBJECT: *Self Communications, Inc. v. FCC & USA*, No. 02-1269. Filing of a Petition for Review to the United States Court of Appeals for the District of Columbia Circuit.

DATE: September 9, 2002

This is to advise you that on August 22, 2002, Self Communications, Inc. filed a Petition for Review to the D.C. Circuit pursuant to 47 U.S.C. § 402 (a) of the following orders:

Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999)

First Reconsideration Order, 14 FCC Rcd 21078 (1999);

Second Order on Reconsideration, 15 FCC Rcd 25020 (2000);

Third Reconsideration Order, FCC 02-130 (rel. May 8, 2002).

In the foregoing rulemaking proceedings, the FCC implemented changes in its rules and policies the licensing and operation of service in the 218-219 MHz Service, formerly known as Interactive Video and Data Service ("IVDS").

The petitioners/appellants challenge the Commission's decisions regarding the "remedial bidding credit" which was instituted after the Supreme Court's *Adarand* decision to remedy the minority- and women-owned business credit provided in the 1994 IVDS auction. Specifically the parties claim that:

- The Commission's decision to convert race/gender bidding credit into a "remedial bidding credit" is arbitrary and capricious because it is not race and gender neutral and excludes small businesses;
- The conversion to the remedial bidding credit is an incomplete remedy for the race/gender discrimination that occurred in the 1994 IVDS auction because it does not include the time value of money or otherwise account for minority and female bidders

received the bidding credit in 1999; and

- The rules effecting the conversion to the remedial bidding credit were adopted in violation of the notice and comment requirements of the **APA**.

The Court has docketed this case as No. 02-1269. The attorney assigned to handle the litigation of this case is Stewart **A.** Block.